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21-ORD-071

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In re: James Coyne/University of Kentucky

Summary: The University of Kentucky (the “University”) violated the Open Records Act (“the Act”) when it denied a request to inspect records that it claimed contain confidential and proprietary information because it did not explain the basis for that claim.

Open Records Decision

James Coyne (“Appellant”) asked the University to provide copies of any Institutional Review Board (“Board”) applications associated with a grant awarded to the University for a study called “Surviving Suicide: Convening Lived-Experience & Research to Improve Patient-Centered Outcomes.”¹ The University denied the request stating only that the “application is exempt from production pursuant to KRS 61.878(1)(c)1, as certain information is generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors and is therefore exempt.” This appeal followed.

The University claims that KRS 61.878(1)(c)1. permits it to deny inspection of the grant application. That provision exempts from disclosure “records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors

¹ The Appellant also sought to inspect the letter in which the Board approved the grant, and any minutes of the Board meeting in which the approval was discussed. The University provided the approval letter and claimed no minutes were taken during the Board’s review of the grant award. The Appellant does not challenge these aspects of the University’s response.

of the entity that disclosed the records.”² Records that are “generally recognized as confidential and proprietary” include records that contain “information concerning the inner workings of a corporation,” such as the “financial history of the corporation, projected cost of the project, the specific amount and timing of capital investment, copies of financial statements and a detailed description of the company’s productivity, efficiency and financial stability.” *Hoy v. Kentucky Indus. Revitalization Auth.*, 907 S.W.2d 766, 768 (Ky. 1995).

However, when a public agency denies a request to inspect records, it must state the applicable exception and provide a brief explanation of how that exception applies to the records withheld. KRS 61.880(1). The burden is always on the public agency to prove that an exception applies to deny inspection of the requested records. KRS 61.880(2)(c). A public agency does not satisfy its burden by merely quoting the language of the statutory exemption. *See Kentucky New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76, 82 (Ky. 2013) (“The agency’s explanation must be detailed enough to permit the court to assess its claim and the opposing party to challenge it.”).

Here, the University does not explain the nature of the information contained in the records it withheld or how that information is generally recognized as confidential and proprietary. In fact, the University states that “most applications for [the Board] do not involve proprietary information[.]” However, the University claims “there are occasions when the application must include proprietary information.” If this is such an occasion, the University does not so state. With nothing more than the University’s bare assertion that KRS 61.878(1)(c)1. applies, this Office finds that the University violated the Act by failing to explain how the exception applies to the record withheld.

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882. Pursuant to KRS 61.880(3), the Attorney General shall be notified of any action

² The University did not claim that KRS 61.878(1)(c)2.a. applies. That exemption provides that “records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which are compiled and maintained . . . in conjunction with an application for or the administration of a loan or grant.” However, both KRS 61.878(1)(c)1. and KRS 61.878(1)(c)2.a. only apply to records that are generally recognized as “confidential and proprietary.” Because the University has not explained how the records that it withheld contain information that is confidential and proprietary, it has not carried its burden to prove that either of these exceptions permit the denial of inspection.

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in circuit court, but shall not be named as a party in that action or in any subsequent proceedings.

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Distributed to:

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